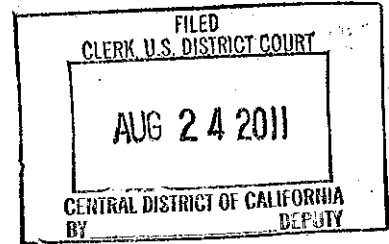


COPY

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

**CV11-06975P(Ex)**

ANT,

Civil Action No.: \_\_\_\_\_

Plaintiff,

vs.

**ANTHONY McPARTLIN, DECLAN  
 DONNELLY, and GALLOWGATE  
 HOLDINGS LIMITED,**

**COMPLAINT**

**[JURY TRIAL DEMANDED]**

Defendants

## **PRELIMINARY STATEMENT**

1. This is an action for service mark infringement, unfair competition, false designation of origin, and for prohibition or cancellation of an infringing service mark registration arising under the Trademark Act of 1946, 15 U.S.C. § 1051 *et seq.*, as amended (the "Lanham Act"), and for service mark infringement, unfair competition, dilution, and unfair business practices under the laws of the State of California. As set forth below, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 & 1338; 15 U.S.C. §§ 1116 & 1121; and 28 U.S.C. § 1367.

## **JURISIDICITION AND VENUE**

2. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338; and 15 U.S.C. §§ 1116 and 1121. Jurisdiction over all other claims is conferred pursuant to 28 U.S.C. § 1367 and in accordance with the principles set forth in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), as said claims are related to those within this Court's original jurisdiction and form part of the same case or controversy.
3. Personal jurisdiction over all Defendants is conferred upon this Court pursuant to Section 410.10 of the California Code of Civil Procedure.
4. Venue is proper pursuant to 28 U.S.C. § 1391(d), as Defendants are aliens and may be sued in any judicial district, and as otherwise set forth in § 1391(b)(2) or (c).
5. This Court has the authority to grant declaratory relief pursuant to 28 U.S.C. § 2201 *et seq.* and/or 15 U.S.C. § 1119.

## **PARTIES**

6. Plaintiff, ANT, is a natural person and citizen of the United States who resides in Los Angeles, California. Plaintiff's original birth name was "Anthony

1 Steven Kalloniatis.” Plaintiff legally changed his name to “ANT” on July 9,  
 2 1993 pursuant to a lawful and valid decree issued by the Superior Court of  
 3 California, and offers his services to the public solely and exclusively under the  
 4 ANT name.

5 7. Defendant, Anthony McPartlin (“McPartlin”) is a natural person who is a  
 6 British citizen and has his principal residence in London. McPartlin provides  
 7 his professional services to the public under the name “ANT.” As set forth  
 8 below, McPartlin has also taken an active part in the hosting and production of  
 9 television shows within the State of California using the ANT name.  
 10 McPartlin’s use of the ANT mark occurred long after Plaintiff’s bona fide use  
 11 of the mark in commerce to identify his own services.

12 8. Defendant, Declan Donnelly (“Donnelly”) is a natural person who is a British  
 13 citizen and has his principal residence in London. Donnelly provides his  
 14 professional services to the public under the name “DEC.” As set forth below,  
 15 Donnelly has also taken an active part in the hosting and production of  
 16 television shows within the State of California with McPartlin, his partner and  
 17 co-host, and has actively and knowingly used, exploited, and directly benefited  
 18 from McPartlin’s use of the ANT name, and/or ratified, approved, or sanctioned  
 19 its use for his own purposes.

20 9. Defendant, Gallowgate Holdings Limited (“Gallowgate”), is a company duly  
 21 formed under the laws of England and Wales and was formed and is owned, in  
 22 whole or in substantial part, by McPartlin and Donnelly. Gallowgate has a  
 23 principal place of business at 2 Water Court, Water Street, Birmingham, B31HP  
 24 United Kingdom. Gallowgate produces various forms of entertainment for and  
 25 with McPartlin and Donnelly in a variety of different media including, but not  
 26 limited to, television, radio, cable, video, audio, and/or the internet. Gallowgate  
 27 produces said entertainment using the ANT and DEC names, and has actively  
 28 done so within the State of California.

**FACTUAL BACKGROUND**

**PLAINTIFF'S BACKGROUND**

10. Plaintiff, ANT, is an acclaimed and nationally-renowned comedian, actor, writer, producer, composer, professional entertainer, and celebrity.
11. During his lengthy career, ANT has appeared in various entertainment media, including, but not limited to, television, movies, radio, video, audio, and throughout the internet.
12. For example, ANT has appeared consistently in numerous TV series, including, but not limited to: "Unhappily Ever After" from 1995 to 1997; "Celebrity Fit Club" from 2005 to 2008; "Steve Harvey's Big Time Challenge" in 2007; "U.S. of ANT" in 2006; "But Can They Sing?" in 2007; "I Love the New Millenium" in 2008; "America's Next Top Model" in 2009; "Issues with Jane Velez-Mitchell" in 2009; and "Celebrity Catch 21" in 2009.
13. ANT also appeared in seasons 1 through 5 as both a contestant and a judge in the NBC television series, "Last Comic Standing," which ran from approximately 2003 to 2008.
14. ANT has also been a regular guest on television shows such as "The Tonight Show with Jay Leno" and has appeared on shows, including, but not limited to: "The Tyra Banks Show;" "The Jamie Foxx Show;" "Kathy Griffin: My Life in the D-List;" "The Dennis Miller Show;" "Celebracadabra;" "Gene Simmons: Family Jewels;" "Mind of Mencia;" "The 40 Greatest Reality TV Moments 2;" "The 100 Most Memorable TV Moments;" "I Love Toys;" "Midnight Money Madness;" "A2Z;" "To Tell the Truth;" and in many other television programs.
15. ANT is also well known for his movie roles and has appeared in movies including "Sister Mary" due to be released in 2011; "Another Gay Movie," released in 2006; "The Underground Comedy Movie," released in 1999; and "Twin Falls Idaho," released in 1999 and which was a Sundance Film Festival official selection for that year.

- 1 16. ANT has also appeared on almost every major radio station in most major cities  
2 and markets throughout the United States, including, but not limited to, the  
3 "Howard Stern Show" (on both terrestrial and Sirius Satellite Radio), the "Bob  
4 and Tom Show," the "Mancow Show," the "Adam Carolla Show," and  
5 "Lovelines with Dr. Drew," to name a few such programs.
- 6 17. Moreover, ANT provides live comedic, visual, and audio performances to  
7 audiences throughout the United States and the world on an ongoing and  
8 continuous basis.
- 9 18. In addition to his many television, movie, radio, and live appearances, ANT has  
10 also served as the Executive Producer for the "U.S. of ANT" series and co-  
11 composed the main title for the series.
- 12 19. ANT is well known on the internet and throughout "cyberspace." His official  
13 website is "www.ANTcomic.com" and incorporates the use of his service mark  
14 throughout. His website offers recordings of his performances as well as  
15 information to the public about, *inter alia*, Plaintiff's entertainment services,  
16 background and career, sales of his CD and DVD, and booking information.
- 17 20. Furthermore, Plaintiff's blog, "The ANT Colony," which can be found at  
18 "http://blog.nbc.com/ANT" and "www.ANTcomic.com/blog", is a highly  
19 ranked celebrity blog and has attracted hundreds of thousands of visitors per  
20 year.
- 21 21. ANT has also written, produced, and distributed a CD through Comedy Central  
22 Records which showcases his comedic and entertainment talents and abilities.
- 23 22. ANT also released a DVD of one of his live performances, entitled, "ANT:  
24 America's Ready." The Logo network, a broadcast unit of MTV Networks and  
25 Viacom, purchased the television broadcast rights for the DVD and has aired it  
26 as a comedy special.
- 27 23. Said television programs, movies, websites, radio appearances, personal  
28 appearances, CD, DVD, and other media in which ANT appears are distributed

1 and available to the public on a national and international basis.

2 24. The ANT service mark has been used in commerce since at least July 10,  
3 1993—if not before then—and has been used continuously to identify and  
4 distinguish Plaintiff and the services he provides to the public.

5 25. Plaintiff filed an application to register the ANT service mark at the United  
6 States Patent and Trademark Office (“USPTO”) on June 15, 2007, in  
7 connection with the services named therein, which fall within International  
8 Class 41 and are described as follows:

9 Entertainment in the nature of live comedic performances;  
10 Entertainment in the nature of visual and audio performances, and  
11 musical, variety, news and comedy shows; Entertainment in the nature  
12 of live performances by a comedian; Entertainment services, namely,  
13 personal appearances by a comedian/celebrity; Entertainment services,  
14 namely, providing a web site featuring musical performances, musical  
15 videos, related film clips, photographs, and other multimedia  
16 materials; Entertainment services, namely, live, televised and movie  
appearances by a professional entertainer; Entertainment services,  
namely, providing a website featuring, photographic, audio, video and  
prose presentations featuring comedy.

17 26. Said mark was published for Opposition in the USPTO’s *Official Gazette* on  
18 November 27, 2007. No oppositions were filed by any party in response  
19 thereto.

20 27. The ANT service mark was registered by the USPTO on the Principal Register  
21 on February 12, 2008. The Registration Number is 3381276. *See* Ex. 1.

22 28. As such, Plaintiff is the sole owner of the entire right, title, and interest to the  
23 valid, unrevoked, and uncanceled federally registered service mark, “ANT.”

24 29. The registered ANT mark is arbitrary and inherently distinctive, and identifies  
25 and distinguishes the source of the services offered to the public by Plaintiff.

26 30. The registration of said mark, combined with Plaintiff’s use and display of the  
27 notice for said registration as set forth 15 U.S.C. § 1111, constitutes actual and  
28 constructive notice to Defendants of ANT’s ownership and exclusive rights in



1 the ANT mark and his use thereof, thereby allowing for the recovery of  
2 damages and profits from Defendants.

3 31. ANT has extensively marketed, advertised, and promoted his services  
4 throughout the United States and the world so that the public readily associates  
5 them with Plaintiff and the ANT mark.

6 32. Plaintiff has invested and spent a considerable amount of money throughout his  
7 career marketing, advertising, and promoting his services as ANT.  
8 Consequently, the ANT service mark is famous throughout the United States  
9 and the world, entitling the mark to greater protection.

10  
11 DEFENDANTS McPARTLIN'S AND DONNELLY'S BACKGROUND

12 33. Defendants McPartlin and Donnelly provide entertainment services in the  
13 United Kingdom, the United States, and throughout the world in a variety of  
14 different media using their professional names, ANT and DEC.

15 34. McPartlin and Donnelly do not use their last names in the marketing,  
16 advertising, promotion, and distribution of their services, but are otherwise  
17 known professionally as ANT and DEC.

18 35. McPartlin also uses the ANT name when marketing, advertising, and promoting  
19 his own entertainment services without Donnelly and when otherwise referring  
20 solely to himself in the marketplace or referred to as ANT by others in the  
21 public. *See, e.g.*, Ex. 14 at 2-10.

22 36. At all relevant times herein, McPartlin, Donnelley, and Gallowgate had actual  
23 or constructive knowledge of Plaintiff's pending registration and/or use of the  
24 ANT mark and knew that their pending registration for "ANT & DEC" or use  
25 thereof was likely to and would cause confusion in connection with the  
26 marketing, advertising, promotion, and distribution of their services or would  
27 otherwise cause mistake or deceive the public.

28 37. From 1995 to 1996, McPartlin and Donnelly starred in "The ANT & DEC

- 1 Show,” which aired on the Children’s British Broadcasting Corporation. Said  
2 show aired in the United Kingdom and was classified as a sketch comedy  
3 program.
- 4 38. McPartlin and Donnelly also starred in “ANT & DEC Unzipped” in 1997,  
5 which aired on television in the United Kingdom and was also classified as a  
6 comedy show.
- 7 39. McPartlin and Donnelly also hosted “ANT & DEC’S Saturday Night  
8 Takeaway” from 2002 through 2008. Defendant Gallowgate produces said  
9 show. Said program was also classified as a comedy program and won a British  
10 Comedy Award in 2005. *See also* ¶ 109, *infra*. *See also* Ex. 19.
- 11 40. In fact, McPartlin and Donnelly have appeared on and participated consistently  
12 in the “British Comedy Awards,” a televised comedy program airing throughout  
13 the United Kingdom and elsewhere, from approximately 2001 through 2006, as  
14 ANT and/or DEC.
- 15 41. From 2001 through at least 2007, McPartlin and Donnelly have appeared on  
16 and participated consistently in “Comic Relief,” a televised comedy program  
17 airing throughout the United Kingdom and elsewhere, as ANT and/or DEC.
- 18 42. McPartlin and Donnelly have also hosted, presented, and appeared in numerous  
19 other television programs and media in the United Kingdom and elsewhere as  
20 ANT and/or DEC, including but not limited to, “Britain’s Got Talent.” Some of  
21 these programs have been classified as “variety shows” or shows involving  
22 “musical performances.”
- 23 43. While many of McPartlin’s and Donnelly’s programs, appearances, and shows  
24 have aired primarily (but not exclusively) throughout the United Kingdom, they  
25 are also marketing, advertising, and promoting themselves as ANT and/or DEC  
26 throughout the United States’ entertainment markets as well.
- 27 44. In the United States, McPartlin and Donnelly hosted “Wanna Bet?”, a television  
28 show that aired on the ABC network in 2008, as ANT and DEC. Said show



1 was produced, marketed, advertised, and promoted by The Gurin Company  
2 (“Gurin”), a California production company, in conjunction and association  
3 with Gallowgate.

4 45. “Wanna Bet?” was filmed entirely in Los Angeles, California at the CBS  
5 Radford Studios. As hosts of the program, McPartlin and Donnelly were  
6 physically present in the State of California while “Wanna Bet?” was being  
7 filmed and produced for nationwide distribution by ABC, and otherwise  
8 directed—and continue to direct—their business, entertainment, and other  
9 activities into this State.

10 46. Furthermore, discussions and negotiations relating to “Wanna Bet?” took place  
11 in Los Angeles via personal meetings with McPartlin, Donnelly, Gallowgate,  
12 and Gurin, or their representatives thereof, and/or via telephone conferences  
13 and e-mail exchanges.

14 47. In addition to the “Wanna Bet” program, which was cancelled in September of  
15 2008, McPartlin and Donnelly are also attempting to secure other forums,  
16 venues, programs, and media outlets throughout the United States in which to  
17 offer their entertainment services to the public as ANT and/or DEC.

18 48. For example, in a June 24, 2009 video blog entry posted on Defendants’  
19 website, “OfficialAntandDec.com,” McPartlin stated that “Simon Cowell  
20 constantly . . . wants us to go work in America.”

21 49. Indeed, as set forth in Exhibit 2, a June 4, 2010 article, McPartlin and Donnelly  
22 were rumored to be under consideration as the hosts for “World’s Got Talent,”  
23 a highly anticipated Simon Cowell-produced television show that was planning  
24 to launch in the near future, including in the United States. McPartlin and  
25 Donnelly would host the program utilizing the ANT mark.

26 50. In addition, ten (10) months prior to the June 4<sup>th</sup> article, in an August 24, 2009  
27 article, attached hereto as Exhibit 3, Donnelly stated that Defendants were in  
28 the process of starting an American version of “Saturday Night Takeaway,”

- 1 another television show they host as ANT and DEC in the United Kingdom:  
2 “We’ve been in talks about taking Takeaway to America, but it’s about finding  
3 enough time to do it.” *Id.*
- 4 51. While it is unclear what the status is of these proposed programs and McPartlin  
5 and Donnelly’s potential hosting duties, Defendants continue in their attempts  
6 to make inroads into the United States using the ANT mark.
- 7 52. In fact, in an October 6, 2010 conversation with Defendants’ California  
8 counsel, Kevin J. Leichter, Esq., although Attorney Leichter would not discuss  
9 the status of his clients regarding the possible “World’s Got Talent” program,  
10 he stated to Plaintiff’s counsel that McPartlin and Donnelly were still interested  
11 in establishing a presence in the American entertainment market despite the  
12 failure of “Wanna Bet?”.
- 13 53. Consequently, Defendants’ sustained efforts and the actual confusion which has  
14 resulted represent continuing and ongoing infringement of the ANT mark. As  
15 set forth below, Plaintiff learned that Defendants’ use of the ANT mark has  
16 caused significant actual confusion in the entertainment marketplace. *See ¶¶*  
17 *87-104, infra. See also Exs. 10-17.*
- 18 54. In any instance, Gallowgate is also in the process of attempting to obtain a  
19 service mark registration at the USPTO for “ANT & DEC” (serial no.  
20 77137929). The application for said mark was filed at the USPTO on March  
21 22, 2007. *See Ex. 4.*
- 22 55. The presence of “DEC” in the ANT & DEC mark does not significantly alter  
23 the mark’s overall commercial impression. Consequently, the ANT & DEC  
24 mark is likely to cause and is causing confusion in the marketplace, and/or  
25 causing mistake or deception. *See* 1200 Trademark Manual of Examining  
26 Procedure [hereinafter “T.M.E.P.”] § 1201.01(b)(i) (“The points of comparison  
27 for a word mark are appearance, sound, meaning, and commercial  
28 impression.”).

1 56. In fact, the addition of the ampersand to the “ANT & DEC” mark, which is the  
2 character equivalent of the common conjunction, “and,” is more likely to  
3 further cause and causing confusion in the marketplace by implying that  
4 Plaintiff endorses or is otherwise sponsored, connected, affiliated, or has a  
5 relationship with Defendants. *See, e.g., In re Riddle*, 225 U.S.P.Q. 630  
6 (T.T.A.B. 1985) (RICHARD PETTY’S ACCU TUNE and design for  
7 automotive service stations held likely to be confused with ACCUTUNE for  
8 automotive testing equipment).

9 57. Furthermore, in its application for registration, Gallowgate listed its services as:

10 [E]ntertainment services, namely, providing a variety show via  
11 television, cable, radio, satellite, audio, video, or online media;  
12 entertainment services in the nature of live musical performances and  
13 live music concerts; production of television and radio shows;  
14 production of radio entertainment, including online; provision of talk  
15 shows; personal appearances by entertainers and celebrities;  
16 production of game shows. (*See Ex. 4.*)

17 58. Plaintiff expressly offers “entertainment services” in association with his  
18 registered mark in the “variety show,” “musical performances,” and “personal  
19 appearances” areas as well. *See Ex. 1.*

20 59. Gallowgate’s, McPartlin’s, and Donnelly’s listed services overlap and converge  
21 with ANT’s services and utilize the same marketing and distribution channels in  
22 the same industry thereby likely to cause and causing confusion, mistake, or  
23 deception in the marketplace.

24 60. Moreover, said listing does not accurately, fully, and completely describe the  
25 range of entertainment services actually and currently offered by McPartlin and  
26 Donnelly.

27 61. Gallowgate, McPartlin, and Donnelly were aware prior to submission of their  
28 application to the USPTO that said listing does not accurately, fully, and  
completely describe the range of entertainment services that they offer to the

1 public, and intentionally and knowingly omitted “comedy” from said listing due  
 2 to the presence of Plaintiff’s pending registration and/or Plaintiff’s long-term  
 3 use of the ANT mark.

4 62. Defendants knew and were otherwise aware that many of the shows and  
 5 programs in which they appeared, hosted, or produced were, in fact, classified  
 6 as “comedy” and/or otherwise knew that the services provided by McPartlin  
 7 and Donnelly were comedic in nature.

8 63. Furthermore, during the marketing and promotion of the “Wanna Bet?”  
 9 television program, ABC stated on its website that the show “is hosted by . . .  
 10 comedians Ant and Dec.” *See* Ex. 5.

11 64. In another part of its website, ABC stated that the show is “[h]osted by . . .  
 12 comedy sensations Ant and Dec.” *See* Ex. 6.

13 65. McPartlin and Donnelley are, at all relevant times herein, wholly and  
 14 completely in control of the way in which they were described, marketed,  
 15 advertised, and promoted by ABC and/or other media outlets.

16 66. Said descriptions on the ABC website appeared at the direction, guidance, or  
 17 request of McPartlin, Donnelly, and/or Gallowgate, or with the endorsement,  
 18 ratification, or consent thereof.

19 67. At all relevant times herein, McPartlin, Donnelly, and/or Gallowgate had  
 20 knowledge and/or were otherwise aware that the “Wanna Bet” show would be  
 21 sold to ABC and/or would be broadcast nationally throughout the United States  
 22 on a major television network.

23 68. McPartlin (“ANT”) has also admitted that his services overlap and converge in  
 24 the comedy area. In an interview posted on the ABC.com website promoting  
 25 “Wanna Bet?”, attached hereto as Exhibit 7, the interviewer asked:

26 **[Interviewer:]** With a “Can they really do it?” tone, this weekly  
 27 event is part comedy, part reality, part nail-biting  
 28 drama. How would you classify the show?



1 radio entertainment, including online' used to describe the services needs  
 2 clarification because the phrase 'including online' is too vague." *Id.*

3 74. In a September 10, 2008 "Request for Reconsideration," attached hereto as  
 4 Exhibit 9, Gallowgate adopted the USPTO's revised identification of services  
 5 and would accept the description without the above language. Thus,  
 6 Gallowgate "submits that it has fully satisfied all outstanding requirements of  
 7 the office action." *Id.*

8 75. However, the omitted language or revised identification does not substantively  
 9 change the application or the description of McPartlin's and Donnelly's  
 10 services and is still likely to cause and causes confusion, mistake, or deception  
 11 by their use and/or registration of said mark.

12 76. Shortly after the first complaint was filed, the parties through their counsel,  
 13 jointly moved to suspend the proceeding at the USPTO pending the resolution  
 14 of the initial case, which the USPTO allowed.<sup>1</sup>

15 77. Moreover, "Wanna Bet?" was considered to be a "flop" and was not well-  
 16 received by either the public or by critics, thereby directly associating Plaintiff,  
 17 through use of his ANT mark, with a program deemed to be a ratings failure  
 18 and thus affecting his reputation, goodwill, and business.

19 78. As highlighted shortly, due to the actual confusion caused by Defendants' use  
 20 of the ANT mark, "Wanna Bet" has unquestionably been associated and  
 21 affiliated with Plaintiff, which continues to this day. *See* ¶¶ 87-104, *infra*.

22 79. Despite the poor showing for "Wanna Bet?", Defendants—as discussed  
 23

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24 <sup>1</sup> All Defendants (and Gurin) were first named in a suit that Plaintiff filed at the District Court in  
 25 Massachusetts in September of 2008, but the Court (Zobel, D.J.) dismissed them for lack of personal  
 26 jurisdiction in October of 2009 and transferred the remainder of the case involving Gurin to the  
 27 Central District of California. Plaintiff then filed an amended complaint in April of 2010 in this  
 28 Court re-naming Gallowgate, McPartlin, and Donnelly (C.A. No. CV09-7672). Defendants,  
 however, eventually contested service (as they reside in the United Kingdom), but the Court—which  
 briefly mentioned the issue yet never formally addressed it as no motion was ever filed by them—  
 dismissed the case against Gurin in August of 2010 and closed it completely shortly thereafter. As  
 such, Plaintiff files the instant action.



1 earlier—have attempted and are still attempting to establish themselves in the  
2 American entertainment market by using the ANT mark, thereby continuing to  
3 infringe Plaintiff's mark. *See* ¶¶ 48-50, *supra*. *See also* Exs. 2 and 3.

4 80. Furthermore, prior to appearing on "Wanna Bet?", McPartlin and Donnelly  
5 were, upon information and belief, required to join the American Federation of  
6 Television and Radio Artists ("AFTRA"), a performers' union that represents  
7 actors in radio and television.

8 81. Upon information and belief, AFTRA's policies, procedures, rules, and/or  
9 precedents prohibit two performers from sharing the same professional name.

10 82. As noted above, Plaintiff has been using the ANT mark since at least 1993,  
11 which is the same year he joined AFTRA. As the mark is also Plaintiff's legal  
12 surname, Plaintiff joined said union as "ANT."

13 83. Upon information and belief, McPartlin and Donnelly joined AFTRA long after  
14 ANT's membership in 1993.

15 84. McPartlin and Donnelly actively used the ANT name to identify themselves in  
16 the marketing, advertising, and promotion of the "Wanna Bet?" show and have  
17 and will likely continue to do so in any other entertainment programs or venues  
18 that they can secure in the United States.

19 85. By so doing, McPartlin and Donnelly have not only caused confusion in the  
20 marketplace, but have knowingly violated AFTRA's policies, procedures, rules,  
21 and/or precedents.

22 86. As such, McPartlin's and Donnelly's use of the ANT name constitutes express  
23 bad faith by Defendants.

#### 24 25 EVIDENCE OF ACTUAL CONFUSION

26 87. Defendants' use of the ANT mark has created numerous instances of actual and  
27 ongoing confusion, only some of which are highlighted below.

28 88. Plaintiff first became aware of the confusion that Defendants' use of the ANT

1 mark caused when a colleague, J Graigory ("Graigory"), contacted him about  
 2 his supposed appearance on "The Jimmy Kimmel Show." *See* Ex. 10.

3 89. Plaintiff, however, was not scheduled to appear—and has never appeared—on  
 4 the Kimmel program. Graigory confused ANT with McPartlin, who was  
 5 scheduled to appear on the program to promote "Wanna Bet?", when Graigory  
 6 saw the name "ANT" written on the show's production board.

7 90. Shortly thereafter, Plaintiff was contacted by Mark Degenkolb ("Degenkolb"),  
 8 who was a Talent Manager with HandPrint entertainment, a leading Los  
 9 Angeles talent management company. Degenkolb believed that Plaintiff was  
 10 hosting "Wanna Bet?" after learning that it was being hosted by "ANT and  
 11 DEC."

12 91. These were not isolated instances. Plaintiff learned of many other examples of  
 13 actual confusion that Defendants' use of the ANT mark has caused upon their  
 14 entry into the American entertainment market.

15 92. TV Guide, which is a prominent entertainment publication, also confused ANT  
 16 with McPartlin and Donnelly. As shown in Exhibit 11, which is a biographical  
 17 listing for ANT on TV Guide's website entitled, "Ant: TV Guide News," there  
 18 are seven (7) supposed entries about Plaintiff's television shows. Of these,  
 19 there are *two (2) listings (i.e., the first and fifth) in which ANT & DEC and*  
 20 *"Wanna Bet?" are discussed*. The very first listing, dated August 13, 2008,  
 21 reads as follows:

22 Cheers to ABC for taking a chance on *Wanna Bet?*. The quietly  
 23 endearing reality show, in which celebs wager on whether contestants  
 24 can pull off stupid human tricks like squeezing an entire marching band  
 25 inside a van, was flailing on Monday nights . . . I wouldn't be surprised  
 26 if its hosts, Ant and Dec (the charming comic duo imported from  
*Britain's Got Talent*), eventually become stars stateside. Anybody  
 wanna bet?

27 93. While this information would have been appropriate under McPartlin's and  
 28 Donnelly's biographical listing on the TV Guide site, it (and another) *appeared*

*under ANT's listing instead.* This is a compelling instance of confusion given TV Guide's status as a distributor and purveyor of entertainment information to the public.

94. Another significant instance of confusion appeared on the "FilmMagic.com" website, attached hereto as Exhibit 12. FilmMagic is a division of Getty Images, Inc., the well-known media outlet which "provides media companies worldwide with immediate access to high-quality celebrity, music and fashion photography." *Id.*

95. When the term "ANT" is used to search for photographs of Plaintiff, *three (3) are displayed with Defendant's name, "Ant McPartlin,"* thereby mistakenly identifying the Plaintiff as McPartlin. *Id.* Like TV Guide, this is another compelling instance of confusion as FilmMagic is also a major provider of media information to the public.

96. Exhibit 13 is a web page from the site, "UrbanDictionary.com". Urban Dictionary is a highly-trafficked website that started in 1999 which currently contains over 10.5 million definitions of various cultural terms. The site describes ANT as follows: "American Comedian who rose to prominence [sic] on Last Comic Standing. He is the host of Vh1's Celebrity Fit Club. *In 2008 he co-hosted ABC's Wanna Bet.*" *Id.* (emphasis added). *Id.* Thus, like TV Guide, ANT's professional background and history is being confused with McPartlin's.

97. Exhibit 14 shows a series of photographs from the website, BuddyTV.com. The first page lists biographical information about ANT. *Id.* However, of the eight (8) photographs which appear on the left side of the first page, *only the one in the upper left corner is actually of Plaintiff.* *Id.* at 1. *The other seven (7) photos are of Donnelly.* Again, there is significant actual confusion.

98. Moreover, the other BuddyTV pages show three (3) photos of Donnelly and six (6) of McPartlin. *See id.* at 2-10. While all of the photos contain the name

“ANT,” what is most significant is the term “Celebracadabra” which appears directly underneath. “Celebracadabra” was an American television show *featuring Plaintiff and not McPartlin or Donnelly*. Yet these photographs all mistakenly associate McPartlin and/or Donnelly with ANT’s professional history, providing additional evidence of confusion.

99. Exhibit 15 shows a listing of Plaintiff’s television appearances taken from the TVRage.com website. “Jimmy Kimmel Live” appears directly underneath “Episode Cast Credits.” *Id.* As highlighted earlier, *Plaintiff was never on the Kimmel program—McPartlin and Donnelly were.* See ¶¶ 88-89, *supra*. Nevertheless, this site has also confused ANT’s professional history and other information with that of Defendants.

100. On June 23, 2009, Plaintiff was scheduled to meet with the company, ActiveSubmissions.com, which updates entertainers’ biographical and professional information. At the office, ANT was given an intake form which had already been partially completed by the company. Under “Name,” it read: “Ant (McPartlin)”. See Ex. 16. When he asked where the company obtained this information, an employee stated that she had found it on the internet and “assumed” it was Plaintiff.

101. On May 8, 2009, about a month prior to the ActiveSubmissions incident, Plaintiff experienced another instance of confusion as he was entering a comedy club at which he was performing. He encountered an excited British woman waiting in line and asked her who she was there to see. She stated to Plaintiff that she thought she was going to see McPartlin, as the club’s marquee prominently advertised that “ANT” was performing there. See Ex. 17.

102. While there are even more instances of actual confusion in various media outlets between Plaintiff and Defendants and their ongoing and continuous use of the ANT mark, the examples cited herein readily establish, *inter alia*, that Plaintiff has stated a colorable infringement claim.

1 103. Furthermore, even though Defendants often use the ANT and DEC names  
2 jointly as a duo, *e.g.*, “ANT & DEC”—as opposed to Plaintiff who is a solo  
3 entertainer—there are instances when McPartlin uses the ANT name by itself  
4 solely when promoting himself and/or his own entertainment services.

5 104. Moreover, regardless of how Defendants identify and brand themselves, the  
6 above examples of actual confusion readily indicate that the public and others  
7 in the entertainment market have nevertheless confused Plaintiff with  
8 Defendants despite any supposed dual/solo distinction, which is irrelevant in the  
9 context of this case.

10  
11 SCANDALS INVOLVING McPARTLIN AND DONNELLY

12 105. In addition to the confusion highlighted above, McPartlin and Donnelly, using  
13 their names ANT and DEC, have been involved in several scandals involving  
14 their television shows in the United Kingdom.

15 106. For example, on or about May 8, 2008, the Office of Communications  
16 (“OFCOM”), which is the independent regulator and competition authority for  
17 the communication industries in the United Kingdom, fined “ANT & DEC’s  
18 Saturday Night Takeaway” television show approximately \$6 million (£3  
19 million) for, *inter alia*, choosing finalists before the competition was closed, not  
20 following the show’s terms and conditions, and failing to choose competition  
21 entrants randomly. *See* Ex. 18.

22 107. OFCOM fined another show starring McPartlin and Donnelly, “ANT & DEC’s  
23 Gameshow Marathon,” approximately \$2.4 million (£1.2 million) for, *inter*  
24 *alia*, failing to choose competition entrants randomly. *Id.*

25 108. Another show starring McPartlin and Donnelly, “I’m a Celebrity, Get Me Out  
26 of Here!” was also found to have violated OFCOM’s rules. *Id.*

27 109. In addition, in May of 2008, it was determined that McPartlin and Donnelly  
28 improperly won a 2005 British Comedy Award after it was exposed that

1 another performer had actually garnered more votes and should have won the  
2 award instead. *See* Ex. 19.

3 110. Due to the similarity of Plaintiff's and McPartlin's & Donnelly's marks, as well  
4 as the identical or related entertainment services that said marks designate in the  
5 stream of commerce—combined with the many instances of confusion that  
6 have already been documented between the parties—such wrongdoing,  
7 controversies, and scandals by McPartlin and Donnelly dilute and tarnish  
8 Plaintiff's goodwill and harm the reputation of ANT and his mark.

# COUNT I

## DECLARATORY RELIEF

(15 U.S.C. § 1119)

13 111. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
14 110 above and incorporates them herein by reference as though set forth in full.

15 112. An actual justiciable dispute and controversy exists between the parties.

16 113. The ANT service mark and the goodwill associated with it in the United States  
17 and throughout the world is of great and incalculable value, inherently  
18 distinctive and arbitrary, and has become associated in the public mind with the  
19 services and reputation of Plaintiff.

20 114. The pending service mark registration at the USPTO for the "ANT & DEC"  
21 mark is likely to cause and causes confusion and misleads and deceives the  
22 public, and otherwise causes mistake as to the source of Defendants' services,  
23 permits Defendants to pass off their services as Plaintiff's services, and falsely  
24 suggests an affiliation, connection, association, or endorsement between  
25 Plaintiff and Defendants, all to the damage and detriment of Plaintiff's  
26 reputation, goodwill, and business.

27 115. Consequently, Plaintiff requests that this Honorable Court declare that  
28 Defendants' mark, "ANT & DEC", be prohibited from registration at the



1 USPTO or, if said registration has already issued, declare that said registration  
2 be cancelled and order the Director of the USPTO to take any other actions that  
3 the Court deems just and proper.  
4

5 **COUNT II**

6 **FEDERAL SERVICE MARK INFRINGEMENT**

7 **(15 U.S.C. § 1114)**

8 116. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
9 115 above and incorporates them herein by reference as though set forth in full.

10 117. The ANT service mark and the goodwill associated with it in the United States  
11 and throughout the world is of great and incalculable value, inherently  
12 distinctive and arbitrary, and has become associated in the public mind with the  
13 services and reputation of Plaintiff.

14 118. Defendants' use of Plaintiff's mark is likely to cause and causes confusion and  
15 misleads and deceives the public, and otherwise causes mistake, as to the source  
16 or origin of Defendants' services, and falsely suggests an affiliation,  
17 connection, or association between Plaintiff and Defendants, all to the damage  
18 and detriment of Plaintiff's reputation, goodwill, and business.

19 119. Defendants thereby infringed Plaintiff's mark.

20 120. Plaintiff has no adequate remedy at law and, if Defendants' activities are not  
21 enjoined, Plaintiff will continue to suffer irreparable harm and other damage  
22 and injury to his goodwill, reputation, and/or business.  
23

24 **COUNT III**

25 **UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN**

26 **(15 U.S.C. § 1125(a))**

27 121. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
28 120 above and incorporates them herein by reference as though set forth in full.

1 122. Defendants' use of Plaintiff's mark is likely to cause and causes confusion and  
 2 misleads and deceives the public, and otherwise causes mistake, as to the source  
 3 of Defendants' services, and falsely suggests an affiliation, sponsorship,  
 4 authorization, approval, connection, or association between Plaintiff and  
 5 Defendants, all to the damage and detriment of Plaintiff's reputation, goodwill,  
 6 and business.

7 123. Moreover, as set forth above, the "Wanna Bet?" show in particular was  
 8 considered to be a "flop" and was not well-received by either the public or by  
 9 critics, thereby directly associating Plaintiff, through use of his ANT mark, with  
 10 a program deemed to be a ratings failure and thus further affecting his  
 11 reputation, goodwill, and business.

12 124. Defendants' acts are in violation of 15 U.S.C. § 1125(a), in that Defendants' use  
 13 of Plaintiff's mark is connection with their services in interstate commerce  
 14 constitutes false designation of origin and unfair competition.

15 125. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered  
 16 damage to his mark and other damages in an amount to be proven at trial.

17 126. Plaintiff has no adequate remedy at law and, if Defendants' activities are not  
 18 enjoined, Plaintiff will continue to suffer irreparable harm and other damage  
 19 and injury to his goodwill, reputation, and/or business.

## 20 21 **COUNT IV**

### 22 **COMMON LAW SERVICE MARK INFRINGEMENT**

23 127. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
 24 126 above and incorporates them herein by reference as though set forth in full.

25 128. Plaintiff has established through prior use and registration a valid and  
 26 protectable interest in the ANT mark in connection with the performance of his  
 27 professional services, and has built and created valuable goodwill in that mark.

28 129. With full knowledge of Plaintiff's mark and the fame of that mark, Defendants

1 have subsequently and without authorization of any kind from Plaintiff, used  
 2 the same and/or a similar mark in connection with their provision of  
 3 professional services of the same kind as Plaintiff provides and has provided at  
 4 all times relevant to this action.

5 130. With full knowledge of Plaintiff's mark and the fame of that mark, Defendants  
 6 have traded and continue to trade on the goodwill associated with the ANT  
 7 mark, and to mislead and/or deceive the public into assuming a connection,  
 8 affiliation, or relationship between Plaintiffs and Defendants where none exists.

9 131. Defendants' acts of service mark infringement are likely to cause, and actually  
 10 have caused, consumer confusion, mistake and deception, and are likely to  
 11 mislead, and actually have misled, the public as to the source of Defendants'  
 12 services. Defendants' acts of infringement have also permitted Defendants to  
 13 pass off their services as Plaintiff's services, and falsely suggest an  
 14 endorsement, connection, affiliation, or relationship between Defendants and  
 15 Plaintiff and, unless restrained by this Court, will continue to do so in violation  
 16 of the common law of the State of California, and to the detriment of Plaintiff,  
 17 his business and reputation, and to the unjust enrichment of Defendants.

18 132. Defendants' acts of infringement have caused and will continue to cause  
 19 Plaintiff irreparable harm unless restrained by this Court.

20 133. Plaintiff has no adequate remedy at law and, if Defendants' activities are not  
 21 enjoined, Plaintiff will continue to suffer irreparable harm and other damage  
 22 and injury to his goodwill, reputation, and/or business.

## 23 **COUNT V**

### 24 **COMMON LAW UNFAIR COMPETITION**

25  
 26 134. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
 27 133 above and incorporates them herein by reference as though set forth in full.

28 135. Plaintiff has invested substantial time and money in the development of the

1 ANT mark and has consequently built and created valuable goodwill in that  
2 mark.

3 136. Defendants have misappropriated the ANT mark at little or no cost.

4 137. Defendants' use of the ANT mark is likely to and does permit Defendants to  
5 pass off their services as those of Plaintiff, to the detriment of Plaintiff and the  
6 unjust enrichment of Defendants.

7 138. Defendants, with full knowledge of the fame of Plaintiff's mark, have misled  
8 and deceived, and will continue to mislead and deceive, the public into  
9 believing that or assuming or suggesting an endorsement, connection,  
10 affiliation, or relationship between Defendants and Plaintiff.

11 139. Defendants' unauthorized use of the ANT mark has caused and is likely to  
12 cause Plaintiff damage in several ways, including without limitation, by  
13 tarnishing his valuable reputation. Defendants have further passed off their  
14 services as Plaintiff's services by their use of the ANT mark to the public,  
15 members of which are likely to believe and do believe that Defendants' services  
16 originate, emanate, or derive from, or are endorsed, connected, affiliated, or  
17 associated with Plaintiff.

18 140. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered  
19 damage to his valuable mark, and other damages to be proven at trial.

20 141. Plaintiff has no adequate remedy at law and, if Defendants' activities are not  
21 enjoined, Plaintiff will continue to suffer irreparable harm and injury to his  
22 goodwill, reputation, and/or business.

23  
24 **COUNT VI**

25 **VIOLATION OF CALIFORNIA UNFAIR BUSINESS PRACTICES ACT**

26 **(California Business & Professions Code § 17200 *et seq.*)**

27 142. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
28 141 above and incorporates them herein by reference as though set forth in full.

1 143. As alleged herein, Defendants have engaged in, and continue to engage in,  
 2 unlawful, unfair, and fraudulent business acts and practices in violation of the  
 3 California Unfair Business Practices Act (the "Act"), California Business &  
 4 Professions Code § 17200, *et seq.* by, *inter alia*, infringing upon and diluting  
 5 the ANT mark in violation of several federal statutes and by committing  
 6 common law service mark infringement and unfair competition.

7 144. As a direct and proximate result of these violations, Plaintiff has suffered and  
 8 continues to suffer great harm, entitling him to relief under the Act, including  
 9 without limitation, restitution and injunctive relief.

## 11 **COUNT VII**

### 12 **WRONGFUL USE OF REGISTERED CALIFORNIA MARK**

#### 13 **(California Business & Professions Code § 14245(a)(1))**

14 145. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
 15 144 above and incorporates them herein by reference as though set forth in full.

16 146. ANT is the registered owner of the service mark ANT pursuant to the California  
 17 Model State Trademark Law, California Business & Professions Code § 14200,  
 18 *et seq.* Pursuant to the Certificate of Registration of Service Mark pertaining to  
 19 the ANT mark, the date of the registration was January 4, 2010, and the mark  
 20 was first used in California on July 9, 1993.

21 147. As alleged herein, Defendants, individually and/or jointly, have unlawfully used  
 22 the ANT mark without the consent of the registrant, ANT, in offering services  
 23 in California and elsewhere.

24 148. Defendants' use of the ANT mark is likely to cause confusion and/or mistake,  
 25 and/or to deceive as to the source of origin of the services, and has in fact  
 26 caused confusion, mistake and deceit as to the source or origin of Defendants'  
 27 services.

28 149. Plaintiff has suffered great harm as a direct and proximate result of Defendants'

1 wrongful use of the ANT mark.

2  
3 **COUNT VIII**

4 **WRONGFUL REPRODUCTION OF REGISTERED CALIFORNIA MARK**

5 **(California Business & Professions Code § 14245(a)(2))**

6 150. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
7 149 above and incorporates them herein by reference as though set forth in full.

8 151. ANT is the registered owner of the service mark ANT pursuant to the California  
9 Model State Trademark Law, California Business & Professions Code § 14200,  
10 *et seq.* Pursuant to the Certificate of Registration of Service Mark pertaining to  
11 the ANT mark, the date of the registration was January 4, 2010, and the mark  
12 was first used in California on July 9, 1993.

13 152. Defendants, individually and/or jointly, without the consent of ANT, have  
14 reproduced, counterfeited, copied, and/or colorably imitated the ANT mark and  
15 applied it to labels, signs, prints, packages, wrappers, receptacles, or  
16 advertisements intended to be used and actually used in connection with the  
17 provision and offering by Defendants, individually and/or jointly, of services in  
18 California.

19 153. Plaintiff has suffered great harm as a direct and proximate result of Defendants'  
20 wrongful reproduction and use of the ANT mark.

21  
22 **COUNT IX**

23 **WRONGFUL ASSISTANCE IN VIOLATION OF REGISTERED**

24 **CALIFORNIA MARK**

25 **(California Business & Professions Code § 14245(a)(3))**

26 154. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through  
27 153 above and incorporates them herein by reference as though set forth in full.

28 155. ANT is the registered owner of the service mark ANT pursuant to the California



Model State Trademark Law, California Business & Professions Code § 14200, et seq. Pursuant to the Certificate of Registration of Service Mark pertaining to the ANT mark, the date of the registration was January 4, 2010, and the mark was first used in California on July 9, 1993.

156. Defendants, individually and/or jointly, have knowingly facilitated, enabled, or otherwise assisted each other in providing services using and bearing reproductions, counterfeits, and/or colorable imitations of the ANT mark without the consent of ANT.

157. Pursuant to the requirements of California Business and Professions Code § 14245(a)(3), ANT has sent a proper written demand to cease and desist accompanied by a copy of the certificate or registration of the ANT mark and by a claimed reproduction, counterfeit, copy, or colorable imitation of the ANT mark and a statement, made under penalty of perjury, to each Defendant by a delivery method that complies with the requirements of said statute.

158. Plaintiff has suffered great harm as a direct and proximate result of Defendants' wrongful facilitation of the violation of the ANT mark.

## COUNT X

### **DILUTION OF REGISTERED CALIFORNIA MARK**

#### **(California Business & Professions Code § 14247)**

159. Plaintiff repeats and reavers the allegations contained in Paragraphs 1 through 158 above and incorporates them herein by reference as though set forth in full.

160. As alleged herein, the ANT mark is famous and distinctive in that it is widely recognized by the general consuming public of California, and/or by a geographic area of California, as a designation of source of the services of the mark's registered owner, ANT.

161. Defendants, wrongfully and without ANT's consent or permission, have used the ANT mark commercially in connection with the offering and provision of

1 their services.

2 162. Defendants' wrongful use of the ANT mark occurred after the mark had  
3 become famous. That use is likely to cause dilution of the famous mark and has  
4 in fact caused dilution of the famous mark.

5 163. Plaintiff has suffered great harm as a direct and proximate result of  
6 Defendants' wrongful use of the ANT mark.

7  
8 **JURY DEMAND**

9 PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL MATTERS SO  
10 TRIABLE.

11  
12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff respectfully requests that this Honorable Court enter the  
14 following relief for Plaintiff:

- 15 1. That Defendants, their officers, agents, servants, employees, affiliates, and all  
16 persons acting for, with, by, through, or under them be permanently enjoined,  
17 and if the circumstances of this matter so dictate, preliminarily enjoined as well:
- 18 a) From using in any manner Plaintiff's mark, ANT, alone or in  
19 combination with any word or words which resemble said service mark  
20 as to be likely to cause confusion, mistake, or deception in connection  
21 with the marketing, advertising, promotion, distribution, transmission,  
22 offering for sale, and otherwise use of the mark;
  - 23 b) From passing off, reverse passing off, inducing, or enabling others to sell  
24 or pass off any service produced by Plaintiff, as their own, or not  
25 produced and approved by Plaintiff;
  - 26 c) From committing any acts calculated to cause the public and or  
27 consumers of Plaintiff's services that Defendants' services are those  
28 sponsored, endorsed, approved by, connected, or affiliated with,

1 Plaintiff's services;

- 2 d) From further diluting and/or infringing Plaintiff's mark and otherwise  
3 damaging Plaintiff's goodwill and reputation;  
4 e) From otherwise competing unfairly with Plaintiff in any manner; and  
5 f) From assisting any other person or party in committing the acts described  
6 herein.

- 7 2. That Defendants be prohibited from registering their mark, "ANT & DEC," or  
8 any confusingly similar derivation thereof, at the USPTO, or if said registration  
9 has already occurred, that it be cancelled forthwith;  
10 3. That Defendants account for and pay to Plaintiff any and all profits realized by  
11 Defendants due to their unlawful acts as alleged herein;  
12 4. That Plaintiff be awarded actual damages in an amount to be proven at trial and  
13 punitive damages, and that such damages be trebled thereof as provided by law  
14 due to Defendants' willful and intentional acts or practices;  
15 5. That Plaintiff be awarded reasonable attorneys' fees and costs; and  
16 6. That this Court order any further relief that it deems just and proper.

17  
18 DATED: August 22, 2011

Respectfully submitted,  
Attorneys for ANT,

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